

# Iran's COVID-19 Response: Who Calls the Shots?

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As of January 26, 2021, Iran [has reported a total of 57,481 death and more than 1,300,000 confirmed cases of COVID-19](#), making it the hardest-hit country in the Middle East. After days of denial, Iranian officials finally confirmed the first COVID-19 related death on February 19, 2020. The government's response in the early days of the pandemic was a preview of what was to come: refusing to quarantine the city of Qom, the first epicenter of COVID in Iran; rejecting the call to postpone the Parliamentary elections; and continuing to receive flights from China, all resulting in the quick spread of the virus across the country.

Iran has only recently come out of its third, and so far, the deadliest wave of COVID and is still embracing the possibility of a fourth wave in the winter. In almost a year since the outbreak, the Iranian government's response can generally be characterized as reactive, lagging, and ineffective. Unlike other countries that have witnessed anti-lockdown protests, the [Iranian government has widely been criticized](#) for its lack of/ or insufficient action. With each peak, healthcare professionals and the public have repeatedly urged the government to shut down the country temporarily. But the government has only reluctantly imposed some relatively loose restrictions, which have been even less effective in execution. The government's reluctance to enforce lockdowns has partly been attributed to the country's economic downfall in the wake of the [U.S.-imposed sanctions and its inability to provide for the people](#). Yet, the domestic mismanagement of the crisis is also undeniable.

In this post, I examine the institutional response to the COVID-19 crisis and trace the origins of the new institutional set-up within the current constitutional framework and the ways in which this model has created new challenges for the future of constitutionalism in Iran. In particular, I argue that the institutional design of the COVID response has once again exposed the structural defects and limits of Iran's constitutional system, especially with respect to the division of power between the government and the Supreme Leader. Moreover, and in line with the broader direction in recent years, this crisis has further contributed to the parliament's marginalization.

## The Creation of the National Headquarter to Combat Corona (NHCC)

Immediately after the public confirmation of the first cases of Covid in Iran, the Supreme National Security Council (SNSC) took the matters into its own hand. Behind closed doors, it issued an order to set up the National Headquarter to Combat Corona (NHCC). It also announced that the NHCC's orders enjoy the same

degree of authority as the SNSC. The SNSC's role as the main organ to assume the power was constitutionally consequential. It signaled the fact that the issue was quickly designated as a national security threat. This is particularly significant as some officials, including the Supreme Leader himself, tiptoed around the idea of bioterrorism in the early days of the pandemic. [The SNSC consists of](#) the heads of the three branches of the government, Chief of the Supreme Command Council of the Armed Forces, the officer in charge of the planning and budget affairs, two representatives nominated by the Leader, ministers of Foreign Affairs, Interior, and Intelligence, a minister related with the subject, and the highest-ranking officials from the Armed Forces and the Islamic Revolution's Guards Corps. Although SNSC is presided by the president, the Constitution explicitly states that its decisions shall only be effective upon the Supreme Leader's approval.

[Article 79 of the Constitution](#) does give the government the power to temporarily impose certain necessary restrictions in case of war or other emergencies. But such invocation is conditioned upon approval of the parliament and needs to be reauthorized every thirty days. The SNSC path chosen to confront the COVID crisis transferred the power from the two elected branches to a more restricted group with the ultimate approval power given to the Supreme Leader. This last feature became a double-edged sword in the fight against the COVID.

Under Iran's Constitution, the Supreme Leader enjoys a significant share of the executive power. He is the Commander in Chief, sets the general policies of the state, and holds significant appointment powers. On March 12, 2020, the Supreme Leader ordered the Supreme Command Council of Armed Forces to set up temporary hospitals and take necessary measures to treat the patients and prevent the further spread of the virus in the country. He instructed the military to cooperate with the government and the Ministry of Health and Medical Education. He also lent his full support to establishing the NHCC and stated that following the NHCC's orders is a legal and religious obligation. This support was critical in the NHCC's decision to close Holy Shrines in Qom and Mashhad and suspend Friday congregations in almost all cities across the country. It is clear that had it not been for his support, the NHCC would have failed to enforce these religiously sensitive decisions in the face of fierce opposition and resistance within more conservative segments of the population and political forces. As one of the MPs said, surprisingly, "who could have imagined that one day the Minister of Health would be able to order the closure of mosques and Friday prayers? Who could have imagined that the military would follow the orders of the Minister of Health?"

Although the Supreme Leader's support reinforced the NHCC's authority, at the same time, it exposed the limits and fragility of this relationship. This imbalance of power meant that the Supreme Leader's clear opposition or even his silence could trouble the enforcement of the NHCC's decisions in the future. The recent controversy over vaccination manifested NHCC's tenuous situation. In his recent speech, the Supreme Leader unequivocally [announced a ban](#) on importing the U.S. and U.K. vaccines. [Many healthcare professionals](#), including those within the Scientific Committee of the NHCC, and even more tacitly the president, expressed their discontent with this decision. Yet, in the wake of his speech, some pre-orders

were supposedly canceled, and NHCC's attention shifted to Russian, Chinese, and Cuban vaccines instead. The result has been public outrage and one of the nation's top infectious disease specialists publicly announcing that she would not get a Russian vaccine. The same is true with regard to some major religious events such as Muharram, which ordinarily gathers hundreds of thousands of mourners each year. Although the Supreme Leader clearly stated that he defers to the decision of the NHCC, he made it clear that those who appreciate the value of the prayer shall make the call. In the end, the NHCC [issued a set of guidelines](#) and urged the religious centers to scale back their events and comply with the Ministry of Health's protocols. However, in practice, the lack of total shutdown and poor execution of protocols brought about some mass gatherings.

## **The Expansion of the NHCC's Power and Its Dubious Legal Grounds**

In its order to establish the NHCC, the SNSC indicated that NHCC's decisions carry the same weight as those of the SNSC. The SNSC's decisions are not usually public, and there are [scholarly debates as to the place of its decisions in the legal hierarchy](#). Its enactments certainly do not qualify as legislation, and therefore, are not subject to constitutional review by the Guardian Council, the organ of judicial review in Iran. On the other hand, the legal practice in the past few decades suggests that the SNSC's decisions cannot merely be classified as executive or administrative decisions. In fact, [Article 12 of the Law on Organization and Procedure of the Court of Administrative Justice](#) (as amended in 2013) clearly states that SNSC's decisions are outside the purview of the Court. More critically, [it is suggested](#) that even the parliament lacks the power to override or modify SNSC's decisions.

It is against this backdrop that the legal authority of the NHCC's decisions and available remedies for potential violation of individual rights and freedoms becomes significant. In fact, the Interior Minister went as far as saying that NHCC's decisions are more authoritative than a law. The centralization of power in the NHCC did not result in swift and aggressive measures to combat the pandemic, though. It was only in November 2020, in the face of the deadliest wave of the COVID, that the NHCC [adopted the Comprehensive Plan for Covid-19 Restrictions](#), which created a targeted and smart response system to the spread of the virus across the country. NHCC's main body, which makes the final decisions, mostly consists of cabinet members (president, ministers of Interior, Health, Transportation, Education, etc.), a member from the Budget and Planning Organization, a member from the Guardian Council, and the armed forces. The NHCC does have sub-committees with epidemiologists and experts in it, but the political appointees have the upper hand in the decision-making process. This set-up has, sometimes, led to contradictory voices coming out of the NHCC with public health experts challenging the adequacy of the NHCC's decisions.

The inefficacy of the NHCC and its refusal to order complete shutdowns when necessary is just one side of the story. As time has passed, the NHCC [has adopted](#)

[more aggressive measures](#) in some areas, such as COVID-related data collection. In October, the NHCC required all medical centers to transfer information about those diagnosed with COVID-19 to the Ministry of Health's central database. It also required individuals infected to self-report to the Ministry of Health, download the authorized tracking application, and not break the quarantine. In November, the NHCC passed a resolution requiring government offices to scan smart national ID cards before rendering their services. In the same session, the NHCC authorized the Information and Communications Technology (ICT) Minister to track data of those diagnosed and notify the Ministry of Health if they break the quarantine. In December, the Ministry of Health announced that hotels, travel agencies, organizations, and even malls could designate a contact person to connect to the centralized database of Covid patients. They also offered to share the data with the ride-sharing applications. It is not clear to what extent these measures have been operationalized yet. Nevertheless, it has been reported that the records have already been used to prevent 700 individuals from getting on flights. A report released by the ICT Ministry catalogs the data collection measures employed in countries like China, South Korea, Taiwan, and Singapore, indicating that the NHCC may move more aggressively to follow their direction. Copying the South Korean model, the ICT Ministry, in its report, suggested using the Central Bank's financial transaction data in contact tracing.

These developments bring to the forefront the questions about the limits of the NHCC or any other SNSC-authorized institution in the law-making and the [remedial measures](#) available for potential violations of individual rights and freedoms. The prospect does not look very promising. As discussed earlier, to treat SNSC's decisions and those of its sub-institutions as a separate category that is not subject to judicial review or legislative override can potentially pose serious problems if not this time around, certainly in the future.

## **The Marginalization of Parliament**

Absent from the discussions so far is the parliament. The political and constitutional developments during the Covid crisis once again confirmed this understanding that the parliament has mostly been sidelined within the Iranian legal system. Although crisis management requires swift actions that are characteristics of the executive, invoking emergency powers could have given some supervisory power to the parliament. Moreover, there seems to be no legislator in the composition of the NHCC's main body even though a representative of the Guardian Council and armed forces are present. This does not mean that the parliament is kept in the dark. There seem to be some meetings between the parliament's commissions and relevant cabinet members, but no major legislation has passed in this regard.

On April 7, 2020, as the cases were rapidly increasing, a few MPs unhappy with the government's failure to declare a lockdown introduced a bill to shut down the country for a month. The proposal was soon rejected by the deputy spokesperson, who said the bill violated Article 79 of the Constitution on emergency powers because it is the executive that needs to initiate the emergency power declaration, not the parliament. Aside from modifications in the Budget Law, the only other legislative measure was

a [bill proposed in November 2020 that required](#) the government to provide essential goods in case of lockdown and compensate struggling businesses. It also included a provision extending the lease contracts up to three months after the end of the pandemic with a maximum 20% increase in the rents. The bill is not yet passed in the parliament. However, the NHCC has periodically ordered the extension of lease contracts on its own. In November, the parliament passed a law on Requiring the Government to Pay Subsidies for Essential Goods. As a result of the U.S.'s crippling sanctions, the cash handouts are not new in Iran. The Law does not explicitly name COVID but is clearly passed with the pandemic's economic impact in mind and provides a very modest payment (less than \$6 per individual and half of that for those with fixed income) to a total of 60 million Iranians for six months. Instead of enforcing the Law, and in the face of the MPs' objections, the NHCC modified the terms and eventually passed a resolution to pay roughly \$ 4 per individual to 40 million people for four months.

Passing the Budget Law also turned to a legislative crisis last March, as the NHCC almost forced the parliament to cancel its sessions due to the outbreak. With time running out to pass the budget, the parliament's spokesperson wrote a letter to the Supreme Leader asking for his authorization to pass the law in the Joint Commission instead of the parliament's plenary session as they were unable to reconvene. At the time, the Supreme Leader authorized this move, and the parliament subsequently revised its Rules of Procedure to allow for the use of video conferencing. However, the idea of an ad hoc institution created by the SNSC forcing the parliament's closure sets off alarm bells.

## Conclusion

In general, the COVID-19 outbreak has created a playbook for handling future crises, public health, or otherwise. The institutional set-up to combat the pandemic has exposed the shortcomings and a need for an effective and transparent response system. It has highlighted the potentials for further power grabs and raised new questions with regard to the power of the SNSC and its sub-institutions. The Expediency Council, which is in charge of setting the state's general policies, has already [issued an order](#) to use the COVID-19 experience to reform the state's general policies in public health and national security area with a focus on bioterrorism. What direction these reforms will take remains to be seen.

